

To: Wright, Felicia[Wright.Felicia@epa.gov]
From: Hurd, Kathy
Sent: Thur 1/5/2017 2:42:54 PM
Subject: Fw: back 40 permit - call with mdeq
2016.11.28.MITW-EPASwenson.BackForty.pdf

Internal and deliberative, not subject to FOIA

Felicia, attached are the comments from the Tribe. they are all the comments on all four permits. The comments on the 404 permit to Mr. Swenson are very broad and general capturing many 404, 402, and even issues that are outside EPA oversight. However, based upon my read of this comment letter and other draft permits, I do think that as the region stated, MI is addressing the Tribe's concerns. For example:

- 1) the application was withdrawn as being insufficient - so request addressed.
- 2) the other plans are part of 402 or other statutory responsibilities, not 404 and this approach is not inconsistent with the federal requirements or USACE's approach. e.g., often NEPA docs are not completed prior to the closing of the public comment period.
- 3) not sure of status, but a 404 permit can only be issued for 5 years, so this may be a matter of a need for a renewal and that is why the company said 7 years.
- 4) the time for public comment (and comment by downstream states and tribes) is not an unusual comment even on federal permits; however, it meets the statutory minimum. Speaking times as you know are always adjusted to allow all time to speak. Removal of documents may be because they have been superseded by new docs.
- 5) MI is coordinating with their SHPO officer.
- 6) need to await new permit to see if this is addressed
- 7) this is a NPDES issue not 404 - although the NPDES permit has been revised to address some of this - permit still pending.
- 8) the GLPO is in the loop about the project.

based upon the issues raised, it looks to me as if the tribe's concerns have been heard and MI is addressing them in the various permits. What the tribe does not have is a letter back from MI on how all the concerns are being addressed. It is probably too early in the process for the state to send such a letter as currently there is no 404 permit application so the state cannot say how some things will be addressed.

I think the process is working as it is supposed to. I think this is a case of the tribe not aware of the MI process and fear of the unknown or unfamiliar processes. But there could be more behind this that I don't know about.

From: Swenson, Peter
 Sent: Wednesday, January 4, 2017 4:40 PM
 To: Hurd, Kathy
 Subject: RE: back 40 permit - call with mdeq

Kathy

Attached are comments from the Menominee Tribe regarding Back 40.

Peter

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